

1 Michele J. Beilke (State Bar No. 194098)
2 mbeilke@huntonAK.com
3 Julia Y. Trankiem (State Bar No. 228666)
4 jtrankiem@huntonAK.com
5 Gabriel M. Huey (State Bar No. 291608)
6 ghuey@huntonAK.com
7 HUNTON ANDREWS KURTH LLP
8 550 South Hope Street, Suite 2000
9 Los Angeles, California 90071-2627
10 Telephone: 213 • 532 • 2000
11 Facsimile: 213 • 532 • 2020

12 Attorneys for Defendant
13 ABBOTT LABORATORIES

14 Carney R. Shegerian (State Bar No. 150461)
15 CShegerian@Shegerianlaw.com
16 Anthony Nguyen (State Bar No. 259154)
17 ANguyen@Shegerianlaw.com
18 Astineh Arakelian (State Bar No. 265761)
19 AArakelian@Shegerianlaw.com
20 SHEGERIAN & ASSOCIATES, INC.
21 225 Santa Monica Boulevard, Suite 700
22 Santa Monica, California 90401
23 Telephone: 310 • 860 • 0770
24 Facsimile: 310 • 860 • 0771

25 Attorneys for Plaintiff
26 KAREN L. MEWBORN

27 UNITED STATES DISTRICT COURT
28 CENTRAL DISTRICT OF CALIFORNIA

29 KAREN L. MEWBORN, an individual,
30 Plaintiff,
31 v.
32 ABBOTT LABORATORIES, an Illinois
33 Corporation; and DOES 1 through 20,
34 inclusive,
35 Defendants.

Case No.: 2:18-cv-08732 DSF(PLAx)

The Honorable Dale S. Fischer

STIPULATED PROTECTIVE ORDER

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles.

10 B. GOOD CAUSE STATEMENT

11 This action is likely to involve confidential, privileged, medical, trade secret,
12 proprietary, commercially-sensitive, and other private documents for which special
13 protection from public disclosure and from use for any purpose other than prosecution
14 of this action is warranted. Such confidential and proprietary materials and information
15 consist of, among other things, medical, private, confidential and proprietary business or
16 financial information, information regarding confidential business practices and policies
17 (including those relating to their internal business operational policies), marketing or
18 business strategies, other confidential research, development, or commercial information
19 (including information implicating privacy rights of third parties), information that is
20 “trade secret” as that term is defined in 18 U.S.C. § 1839, information otherwise
21 generally unavailable to the public, or which may be personal in nature, privileged, or
22 otherwise protected from disclosure under state or federal statutes, court rules, case
23 decisions, or common law. Disclosure of this information to persons who are not entitled
24 to it carries the danger of compromising the competitive business interests of Defendant,
25 and also risks invasion of legitimate personal privacy interests of Plaintiff and non-
26 parties. Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately protect
28 information the parties are entitled to keep confidential, to ensure that the parties are

1 permitted reasonable necessary uses of such material in preparation for and in the
2 conduct of trial, to address their handling at the end of the litigation, and to serve the
3 ends of justice, a protective order for such information is justified in this matter. It is the
4 intent of the parties that information will not be designated as confidential for tactical
5 reasons and that nothing will be so designated without a good faith belief that it has been
6 maintained in a confidential, non-public manner, and there is good cause why it should
7 not be part of the public record of this case.

8 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that this
10 Stipulated Protective Order does not entitle them to file confidential information under
11 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
12 standards that will be applied when a party seeks permission from the court to file
13 material under seal.

14 There is a strong presumption that the public has a right of access to judicial
15 proceedings and records in civil cases. In connection with non-dispositive motions,
16 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
17 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
18 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*,
19 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
20 cause showing), and a specific showing of good cause or compelling reasons with
21 proper evidentiary support and legal justification, must be made with respect to
22 Protected Material that a party seeks to file under seal. The parties' mere designation
23 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
24 submission of competent evidence by declaration, establishing that the material sought
25 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
26 constitute good cause.

27 Further, if a party requests sealing related to a dispositive motion or trial, then
28 compelling reasons, not only good cause, for the sealing must be shown, and the relief

sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1. Action: *Karen L. Mewborn v. Abbott Laboratories* (Case No. 2:18-cv-08732 DSF(PLAx)).

2.2. Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3. “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5. Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

1 2.6. Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including, among
3 other things, testimony, transcripts, and tangible things), that are produced or generated
4 in disclosures or responses to discovery in this matter.

5 2.7. Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
7 expert witness or as a consultant in this Action.

8 2.8. House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.9. Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.10. Outside Counsel of Record: attorneys who are not employees of a party to
14 this Action but are retained to represent or advise a party to this Action and have
15 appeared in this Action on behalf of that party or are affiliated with a law firm that has
16 appeared on behalf of that party, and includes support staff.

17 2.11. Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 2.13. Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
25 their employees and subcontractors.

26 2.14. Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL.”

28 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material

1 from a Producing Party.

2
3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected
5 Material (as defined above), but also (1) any information copied or extracted from
6 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
7 Material; and (3) any testimony, conversations, or presentations by Parties or their
8 Counsel that might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the trial
10 judge. This Order does not govern the use of Protected Material at trial.

11
12 4. DURATION

13 Once a case proceeds to trial, information that was designated as
14 CONFIDENTIAL or maintained pursuant to this protective order used or introduced as
15 an exhibit at trial becomes public and will be presumptively available to all members
16 of the public, including the press, unless compelling reasons supported by specific
17 factual findings to proceed otherwise are made to the trial judge in advance of the trial.
18 *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
19 documents produced in discovery from “compelling reasons” standard when merits-
20 related documents are part of court record). Accordingly, the terms of this protective
21 order do not extend beyond the commencement of the trial.

22
23 5. DESIGNATING PROTECTED MATERIAL

24 5.1. Exercise of Restraint and Care in Designating Material for Protection.
25 Each Party or Non-Party that designates information or items for protection under this
26 Order must take care to limit any such designation to specific material that qualifies
27 under the appropriate standards. The Designating Party must designate for protection
28 only those parts of material, documents, items or oral or written communications that

1 qualify so that other portions of the material, documents, items or communications for
2 which protection is not warranted are not swept unjustifiably within the ambit of this
3 Order.

4 Mass, indiscriminate or routinized designations are prohibited. Designations that
5 are shown to be clearly unjustified or that have been made for an improper purpose
6 (e.g., to unnecessarily encumber the case development process or to impose
7 unnecessary expenses and burdens on other parties) may expose the Designating Party
8 to sanctions.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2. Manner and Timing of Designations. Except as otherwise provided in this
13 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
14 or ordered, Disclosure or Discovery Material that qualifies for protection under this
15 Order must be clearly so designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix at a minimum, the legend
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
21 contains protected material. If only a portion of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
23 by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents available for inspection
25 need not designate them for protection until after the inspecting Party has indicated
26 which documents it would like copied and produced. During the inspection and before
27 the designation, all of the material made available for inspection shall be deemed
28 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions
2 thereof, qualify for protection under this Order. Then, before producing the specified
3 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
4 that contains Protected Material. If only a portion of the material on a page qualifies
5 for protection, the Producing Party also must clearly identify the protected portion(s)
6 (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in depositions that the Designating Party
8 identifies the Disclosure or Discovery Material on the record, before the close of the
9 deposition all protected testimony.

10 (c) for information produced in some form other than documentary and
11 for any other tangible items, that the Producing Party affix in a prominent place on the
12 exterior of the container or containers in which the information is stored the legend
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants
14 protection, the Producing Party, to the extent practicable, shall identify the protected
15 portion(s).

16 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material. Upon
19 timely correction of a designation, the Receiving Party must make reasonable efforts to
20 ensure that the material is treated in accordance with the provisions of this Order.

21 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time that is consistent with the Court’s Scheduling
25 Order.

26 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process under Local Rule 37-1 et seq.

28 6.3. The burden of persuasion in any such challenge proceeding shall be on the

1 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
2 to harass or impose unnecessary expenses and burdens on other parties) may expose the
3 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
4 the confidentiality designation, all parties shall continue to afford the material in
5 question the level of protection to which it is entitled under the Producing Party's
6 designation until the Court rules on the challenge.

7
8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1. Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this Action
11 only for prosecuting, defending or attempting to settle this Action. Such Protected
12 Material may be disclosed only to the categories of persons and under the conditions
13 described in this Order. When the Action has been terminated, a Receiving Party must
14 comply with the provisions of section 13 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons
17 authorized under this Order.

18 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
20 may disclose any information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this Action, as
22 well as employees of said Outside Counsel of Record to whom it is reasonably
23 necessary to disclose the information for this Action;

24 (b) the officers, directors, and employees (including House Counsel) of
25 the Receiving Party to whom disclosure is reasonably necessary for this Action;

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
27 disclosure is reasonably necessary for this Action and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

- 1 (d) the court and its personnel;
- 2 (e) court reporters and their staff;
- 3 (f) professional jury or trial consultants, mock jurors, and Professional
- 4 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 (g) the author or recipient of a document containing the information or
- 7 a custodian or other person who otherwise possessed or knew the information;
- 8 (h) during their depositions, witnesses, and attorneys for witnesses, in
- 9 the Action to whom disclosure is reasonably necessary provided: (1) the deposing party
- 10 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
- 11 not be permitted to keep any confidential information unless they sign the
- 12 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
- 13 by the Designating Party or ordered by the court. Pages of transcribed deposition
- 14 testimony or exhibits to depositions that reveal Protected Material may be separately
- 15 bound by the court reporter and may not be disclosed to anyone except as permitted
- 16 under this Stipulated Protective Order; and
- 17 (i) any mediator or settlement officer, and their supporting personnel,
- 18 mutually agreed upon by any of the parties engaged in settlement discussions.
- 19

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN

21 OTHER LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation

23 that compels disclosure of any information or items designated in this Action as

24 “CONFIDENTIAL,” that Party must:

25 (a) promptly notify in writing the Designating Party. Such notification

26 shall include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or

28 order to issue in the other litigation that some or all of the material covered by the

1 subpoena or order is subject to this Protective Order. Such notification shall include a
2 copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the
6 subpoena or court order shall not produce any information designated in this action as
7 “CONFIDENTIAL” before a determination by the court from which the subpoena or
8 order issued, unless the Party has obtained the Designating Party’s permission. The
9 Designating Party shall bear the burden and expense of seeking protection in that court
10 of its confidential material and nothing in these provisions should be construed as
11 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
12 from another court.

13
14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
15 IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
18 produced by Non-Parties in connection with this litigation is protected by the remedies
19 and relief provided by this Order. Nothing in these provisions should be construed as
20 prohibiting a Non-Party from seeking additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party’s confidential
24 information, then the Party shall:

25 (1) promptly notify in writing the Requesting Party and the Non-
26 Party that some or all of the information requested is subject to a confidentiality
27 agreement with a Non-Party;

28 (2) promptly provide the Non-Party with a copy of the Stipulated

1 Protective Order in this Action, the relevant discovery request(s), and a reasonably
2 specific description of the information requested; and

3 (3) make the information requested available for inspection by
4 the Non-Party, if requested.

5 (c) If the Non-Party fails to seek a protective order from this court
6 within 14 days of receiving the notice and accompanying information, the Receiving
7 Party may produce the Non-Party's confidential information responsive to the discovery
8 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
9 produce any information in its possession or control that is subject to the confidentiality
10 agreement with the Non-Party before a determination by the court. Absent a court order
11 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
12 in this court of its Protected Material.

13
14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
18 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
19 all unauthorized copies of the Protected Material, (c) inform the person or persons to
20 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
21 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
22 that is attached hereto as Exhibit A.

23
24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PRO-
25 TECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
28 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without prior
3 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
4 parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 parties may incorporate their agreement in the stipulated protective order submitted to
7 the court.

8
9 12. MISCELLANEOUS

10 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 12.2. Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order, no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3. Filing Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
19 only be filed under seal pursuant to a court order authorizing the sealing of the specific
20 Protected Material at issue. If a Party's request to file Protected Material under seal is
21 denied by the court, then the Receiving Party may file the information in the public
22 record unless otherwise instructed by the court.

23
24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must return all
27 Protected Material to the Producing Party or destroy such material. As used in this
28 subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected
2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
3 must submit a written certification to the Producing Party (and, if not the same person
4 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
5 category, where appropriate) all the Protected Material that was returned or destroyed
6 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
7 compilations, summaries or any other format reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
9 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
11 work product, and consultant and expert work product, even if such materials contain
12 Protected Material. Any such archival copies that contain or constitute Protected
13 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14
15 14. VIOLATION

16 Any violation of this Order may be punished by appropriate measures including,
17 without limitation, contempt proceedings and/or monetary sanctions.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: July 18, 2019

HUNTON ANDREWS KURTH LLP

4
5 By: /s/ Michele J. Beilke

6 Michele J. Beilke

7 Julia Y. Trankiem

8 Gabriel M. Huey

9 Attorneys for Defendant

ABBOTT LABORATORIES

10
11 DATED: July 18, 2019

SHEGERIAN & ASSOCIATES, INC.

12
13 By: /s/ Astineh Arakelian

14 Carney R. Shegerian

15 Anthony Nguyen

16 Astineh Arakelian

17 Attorneys for Plaintiff

18 KAREN L. MEWBORN

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DATED: July 18, 2019 **HUNTON ANDREWS KURTH LLP**

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: July 19, 2019

HON. PAUL L. ABRAMS
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, of _____,
4 declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the
6 Central District of California on _____ in the case of *Karen L. Mewborn v. Abbott*
7 *Laboratories*, USDC Case No. Case No. 2:18-cv-08732 DSF(PLAx). I agree to comply
8 with and to be bound by all the terms of this Stipulated Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
11 manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order. I further
13 agree to submit to the jurisdiction of the United States District Court for the Central
14 District of California for enforcing the terms of this Stipulated Protective Order, even
15 if such enforcement proceedings occur after termination of this action. I hereby appoint
16 _____ of _____ as my California agent for service of
17 process in connection with this action or any proceedings related to enforcement of this
18 Stipulated Protective Order.

19 DATE: _____

20 City and State where sworn and signed: _____

21
22 Printed name: _____

23
24 Signature: _____